

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

**ATTORNEYS AT LAW**

**RALEIGH, NORTH CAROLINA**

MAILING ADDRESS  
POST OFFICE BOX 1800  
RALEIGH, N.C. 27602

OFFICE ADDRESS  
1600 WACHOVIA CAPITOL CENTER  
150 FAYETTEVILLE STREET  
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300  
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

HENRY E. FRYE  
OF COUNSEL

J. LEE LLOYD  
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)  
W.H. HOLDERNESS (1904-1965)  
L.P. McLENDON (1890-1968)  
KENNETH M. BRIM (1898-1974)  
C.T. LEONARD, JR. (1929-1983)  
CLAUDE C. PIERCE (1913-1988)  
THORNTON H. BROOKS (1912-1986)  
G. NEIL DANIELS (1911-1997)  
HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE  
2000 RENAISSANCE PLAZA  
230 NORTH ELM STREET  
GREENSBORO, N.C. 27401

WASHINGTON OFFICE  
601 PENNSYLVANIA AVENUE, N.W.  
SUITE 900, SOUTH BUILDING  
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

L.P. McLENDON, JR.  
EDGAR B. FISHER, JR.  
W. ERWIN FULLER, JR.  
JAMES T. WILLIAMS, JR.  
WADE H. HARGROVE  
M. DANIEL MCGINN  
MICHAEL D. MEEKER  
WILLIAM G. MCNAIRY  
EDWARD C. WINSLOW III  
HOWARD I. WILLIAMS  
GEORGE W. HOUSE  
WILLIAM P.H. CARY  
REID L. PHILLIPS  
ROBERT A. SINGER  
JOHN H. SMALL  
RANDALL A. UNDERWOOD  
S. LEIGH RODENBOUGH IV  
MARK J. PRAK  
JILL R. WILSON  
MARC D. BISHOP  
JIM W. PHILLIPS, JR.  
MACK SPERLING  
JEFFREY E. OLEYNIK  
MARK DAVIDSON  
JOHN W. ORMAND III  
ROBERT J. KING III  
V. RANDALL TINSLEY  
S. KYLE WOOSLEY  
FORREST W. CAMPBELL, JR.  
MARCUS W. TRATHEN  
JEAN C. BROOKS  
JAMES C. ADAMS II  
ALLISON M. GRIMM  
ELIZABETH S. BREWINGTON  
H. ARTHUR BOLICK II  
J. EDWIN TURLINGTON  
JOHN M. CROSS, JR.  
JENNIFER K. VAN ZANT  
KEARNS DAVIS  
DAVID W. SAR  
BRIAN J. McMILLAN  
DAVID KUSHNER  
DEREK J. ALLEN  
CLINTON R. PINYAN  
COE W. RAMSEY  
ROBERT W. SAUNDERS  
ELIZABETH V. LaFOLLETTE  
GINGER S. SHIELDS  
JENNIFER T. HARROD  
CHARLES E. COBLE  
CHARLES F. MARSHALL III  
PATRICK J. JOHNSON  
STEPHEN G. HARTZELL  
JESSICA M. MARLIES  
ANDREW J. HAILE  
J. BENJAMIN DAVIS  
CAROLINE E. RITCHIE  
SARA R. VIZITHUM  
C. SCOTT MEYERS  
JOHN S. BUFORD  
NICOLE A. CRAWFORD  
ALEXANDER ELKAN  
KATHERINE J. CLAYTON  
KATHLEEN A. GLEASON  
SUSAN M. YOUNG  
DARRELL A. FRUTH  
JAIN MACSWEEN  
BENJAMIN R. NORMAN  
ELIZABETH E. SPAINHOUR  
JENNIFER C. NOBLE  
DAVID L. NEAL  
SARAH A.L. PHILLIPS  
PHILLIP J. LONG  
ANDREW T. TRIPP  
KATHERINE A. SOLES

October 25, 2007

**Via Hand-Delivery**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

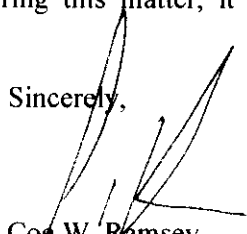
**Re:   Hearst-Argyle Television, Inc.  
Petition for Reconsideration of the  
Seventh Report and Order in MB Docket No. 87-268**

Dear Ms. Dortch:

On behalf of Hearst-Argyle Television, Inc., enclosed for filing are an original and four (4) copies of a Petition for Reconsideration to the *Seventh Report and Order* in the above-referenced docket. This petition is also being filed electronically in the Commission's Electronic Comment Filing System.

Should any questions arise in considering this matter, it is respectfully requested that you communicate with this office.

Sincerely,

  
Coe W. Ramsey  
Counsel to Hearst-Argyle Television, Inc.

Enclosure  
cc:   Nazifa Sawez (by hand)

No. of Copies rec'd 04  
List ABCDE

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FILED/ACCEPTED  
OCT 25 2007  
Federal Communications Commission  
Office of the Secretary

In the Matter of

Advanced Television Systems  
And Their Impact Upon the Existing  
Television Broadcast Service

)  
)  
)  
)  
)  
)

MB Docket No. 87-268

To: The Commission

**PETITION FOR RECONSIDERATION  
BY HEARST-ARGYLE TELEVISION, INC.**

Mark J. Prak  
Coe W. Ramsey  
Stephen Hartzell

BROOKS, PIERCE, MCLENDON,  
HUMPHREY & LEONARD, L.L.P.  
Wachovia Capitol Center, Suite 1600  
150 Fayetteville Street (27601)  
Post Office Box 1800  
Raleigh, North Carolina 27602  
Telephone: (919) 839-0300  
Facsimile: (919) 839-0304

*Counsel to Hearst-Argyle Television, Inc.*

October 25, 2007

## PETITION FOR RECONSIDERATION

Hearst-Argyle Television, Inc. (“Hearst”), the parent company of the licensees of WGAL(TV) and WGAL-DT, Lancaster, Pennsylvania, and WYFF(TV) and WYFF-DT, Greenville, South Carolina, by and through its undersigned attorneys and pursuant to Section 1.106 of the Commission’s Rules, hereby requests that the Commission reconsider its decision in *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, 22 FCC Rcd 15581 (2007) (“*Seventh Report and Order*”). Specifically, for the reasons discussed herein, the Commission should reconsider the technical facilities it assigned to both WGAL-DT and WYFF-DT in Appendix B of the final digital table of allotments (“DTV TOA”).

### **I. WGAL-DT, Lancaster, Pennsylvania (Facility ID No. 53930)**

In timely filed, detailed comments,<sup>1</sup> in response to the *Seventh Further Notice of Proposed Rulemaking*, 21 FCC Rcd 12100 (2006) (“*Seventh Further Notice*”), Hearst proposed to change the certified technical parameters for WGAL-DT’s post transition facility and the corresponding DTV TOA Appendix B data to reflect replication parameters rather than WGAL-DT’s currently licensed parameters. In its comments, Hearst, supported by an engineering statement, observed that, consistent with the *Seventh Further Notice*,<sup>2</sup> Hearst could obtain authorization for replication parameters at any time in full compliance with the Commission’s current application freeze. In addition, Hearst noted that a checklist replication facility for WGAL-DT could be granted without prejudice to any other certified facility and that

---

<sup>1</sup> Hearst’s comments are attached as Exhibit 1.

<sup>2</sup> See *Seventh Further Notice*, ¶¶ 28-29.

the proposed change to WGAL-DT's replication facility complies with the 0.1 percent interference limit. Accordingly, Hearst submitted that its proposal for WGAL-DT satisfies the criteria set forth in paragraphs 28-29 of the *Seventh Further Notice*, and thus, the data in Appendix B for WGAL-DT's Channel 8 operation should be changed to specify WGAL-DT's replication facility as follows:

<b>Current WGAL-DT Data (Licensed)</b>	<b>Requested WGAL-DT Data (Replication)</b>
393 meters HAAT	415 meters HAAT
13.4 kW ERP	5.36 kW ERP

The Commission, in the *Seventh Report and Order*, declined to grant Hearst's request with respect to WGAL-DT, merely stating: "The stations whose Appendix B facilities are not being changed are: . . . WGAL, Lancaster, PA . . ." *Seventh Report and Order*, ¶ 66 n.166. The Commission provided no analysis of Hearst's proposal. As noted, the *only* reference to WGAL's proposal was the summary denial of it in a *footnote*. This falls well short of reasoned decision-making required under the Administrative Procedure Act.

The Commission observed in the *Seventh Report and Order*:

In view of the importance of finalizing post-transition DTV channels and facilities to permit stations to complete their DTV build-out, the Commission reviewed the comments to determine whether the requests for changes were consistent with the standards outlined in the *Seventh Further Notice*. Where the proposed changes to the DTV Table and/or Appendix B are consistent and do not create new post-transition interference to a TCD of more than 0.1 percent, the request is granted.

*Seventh Report and Order*, ¶ 26. Hearst's proposal for WGAL-DT meets these criteria (i.e., consistency with the standards outlined in the *Seventh Further Notice* and compliance with the

interference limit), yet the Commission—*without saying why*—dismissed Hearst’s proposal. This action flies in the face of the cardinal rule of administrative law that similarly situated stations may not be treated differently without explanation. *See Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

Moreover, the Commission noted that it

recalculated Appendix B facilities based on replicating the analog coverage that was used to determine their initial DTV table facilities. If the recalculation would result in a reduction in the Appendix B facilities, we are adopting herein the larger Appendix B facilities that we had initially proposed in the *Seventh Further Notice*. If the recalculation would result in a larger coverage area and our analysis indicates that the recalculated facilities (1) meet the 0.1 percent interference standard specified in the *Second DTV Periodic Report and Order* or (2) would cause more than 0.1 percent interference but the affected station(s) agree to accept the interference, we are granting the request to change DTV Appendix B to reflect the larger coverage area. . . . There were no comments filed opposing these requested changes.

*Seventh Report and Order*, ¶ 66. The WGAL-DT Engineering Statement filed with Hearst’s comments demonstrates that WGAL-DT’s proposal meets these criteria as well (i.e., the recalculation would result in a larger coverage area, would meet the 0.1 percent interference standard and was unopposed). Yet the Commission, without explanation, failed to grant Hearst’s request to modify WGAL-DT’s allotment parameters.

In *Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board*, 403 F.3d 771, 776-77 (D.C. Cir. 2005), the D.C. Circuit reiterated this fundamental rule of administrative law:

An agency must provide an adequate explanation to justify treating similarly situated parties differently. Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.

*Id.* (citations omitted). In denying Hearst's WGAL-DT proposal without explanation while granting the proposals of similarly situated stations, the Commission violated these principles and its action is, as a result, arbitrary and capricious. The purpose of this petition is to provide an opportunity for correction of this error.

Given that the "overall goal in the DTV transition [is] encouraging replication of analog service,"<sup>3</sup> it may be that the Commission simply misunderstood Hearst's proposal. The WGAL-DT Engineering Statement demonstrates that acceptance by the Commission of Hearst's proposal to change WGAL's certification would have been proper—and that denial by the Commission would be inconsistent with other action taken by the Commission in the *Seventh Report and Order*.

On page 5 of the Engineering Statement submitted with WGAL's proposal in Hearst's comments, a table sets out the service area and service population for WGAL's currently approved post-transition operation and WGAL's proposed post-transition operation. Both the population and the service area would be larger under Hearst's proposal than under the currently approved facility. Indeed, Hearst's proposal increases WGAL-DT's interference-free service population by 23.9 percent. Pursuant to paragraph 66 of the *Seventh Report and Order*, then, Hearst's proposal should have been adopted. Because the *Seventh Report and Order* is silent on the reason for the Commission's rejection of the proposal, there is no indication whatsoever that the Commission drew a conclusion at odds with the data presented in the WGAL-DT Engineering Statement.

Furthermore, the Commission stated:

We believe that permitting these changes to the proposed  
DTV Table is consistent with our overall goal in the DTV

---

<sup>3</sup> *Seventh Report and Order*, ¶ 67.

transition of encouraging replication of analog service. One of the Commission's objectives throughout the transition has been to permit broadcasters to reach with digital service the audiences they have been serving with analog service so that viewers will continue to have access to the stations that they are accustomed to receiving over the air. We believe that the revisions requested by the stations listed in Appendix D3 will serve the public interest by permitting those stations to provide digital service to more of their established analog viewers.

*Seventh Report and Order*, ¶ 67. Significantly, Hearst's proposal for WGAL-DT would further the public interest in precisely the same manner—by permitting Hearst to elect replication facilities and provide digital service to more of WGAL-DT's established analog viewers.<sup>4</sup> In addition, as a practical matter, Hearst's proposal would permit WGAL-DT to employ its existing non-directional Channel 8 antenna for its post-transition digital facility. Accordingly, it is respectfully requested that the Commission reconsider its rejection of Hearst's WGAL-DT proposal and modify the DTV TOA Appendix B data to specify WGAL-DT's replication facility.

## **II. WYFF-DT, Greenville, South Carolina (Facility ID No. 53905)**

The post-transition allotment the Commission assigned to WYFF-DT in the DTV TOA is Channel 36, with an ERP of 664 kW at 577 meters HAAT. This allotment falls substantially short of replication of WYFF's analog coverage area and is contrary to the Commission's "overall goal in the DTV transition of encouraging replication of analog service."<sup>5</sup> As the attached engineering statement demonstrates ("WYFF-DT Engineering Statement"), a Channel 36 allotment with an ERP of 1000 kW and HAAT of 596 meters would further the public interest

---

<sup>4</sup> WGAL-DT's currently allotted facility only matches 88 percent of its current NTSC coverage, whereas the requested replication facility will match virtually all of the station's NTSC coverage.

<sup>5</sup> *Seventh Report and Order*, ¶ 67.

by allowing WYFF-DT's post-transition operation to more nearly replicate its analog service (with no detrimental effect to any other station) and would be consistent with other changes made by the Commission to the DTV TOA<sup>6</sup>. Therefore, for the reasons discussed herein, the Commission should reconsider the WYFF-DT allotment and modify the data in Appendix B for WYFF-DT as follows:

<b>Current WYFF-DT Data</b>	<b>Requested WYFF-DT Data</b>
577 meters HAAT	596 meters HAAT
664 kW ERP	1000 kW ERP

WYFF, which operates on analog Channel 4 with an ERP of 100 kW and antenna HAAT of 610 meters, was initially allotted out-of-core DTV Channel 59 with an ERP of 1000 kW and antenna HAAT of 610 meters, which was predicted to serve only 92 percent of WYFF's analog Channel 4 population. *See Sixth Report and Order*, FCC 97-115, MM Docket No. 87-268 (1997), Appendix B. WYFF-DT constructed its DTV facility with the antenna side-mounted on its tower, and licensed it in FCC File No. BLCDT-20050218ACE, which is the same facility WYFF-DT certified to in its FCC Form 381 filing. While WYFF-DT's Channel 59 facility was limited to 1000 kW ERP and an antenna HAAT of 577 meters, WYFF-DT elected and was ultimately assigned Channel 36 for its post-transition DTV operation. *See Seventh Report and Order*, Appendix B. WYFF-DT's Channel 36 allotment was assigned an ERP of 664 kW and a HAAT of 577 meters, *which was for replication of the Channel 59 facilities, not the Channel 4 analog facilities*. As WYFF-DT's Channel 36 allotment was limited by its initial 1000 kW Channel 59 allotment, the Channel 36 allotment fails to provide replication of the population and

---

<sup>6</sup> *See Seventh Report and Order*, ¶¶ 62-67.



area served by the station's current Channel 4 analog facility. Specifically, as detailed in the WYFF-DT Engineering Statement, the current Channel 36 allotment fails to replicate WYFF's analog facility by 52,000 persons.

In the *Seventh Report and Order*, the Commission acknowledged that certain stations received initial DTV channel allotments or "maximized" facilities that were not sufficient to permit replication of the station's analog service. *See Seventh Report and Order*, ¶ 63. The Commission granted relief to some stations by modifying their ERP assignment in the DTV TOA Appendix B to permit the stations to replicate their analog service areas. *See id.*, ¶ 66. Specifically, the FCC recalculated the DTV TOA Appendix B facilities based on analog replication, and where such recalculation yielded a larger coverage area and where the recalculated facilities (1) did not cause more than 0.1 percent additional interference to any tentatively designated allotment in the proposed DTV Table Appendix B or (2) did not meet the 0.1 percent interference standard but the affected station(s) agreed to accept the interference, the FCC changed the DTV TOA Appendix B to reflect the larger coverage area. *See id.* While this relief was granted to stations whose licensees specifically requested such relief in connection with the *Seventh Report and Order*, this relief was not granted universally and, therefore, was not granted to WYFF-DT.

As set forth in the WYFF-DT Engineering Statement, modifying WYFF-DT's TOA facility to specify 1000 kW and 596 meters HAAT would provide net service to 123,200 more persons than the current allotment and would materially improve replication of WYFF's analog coverage. Moreover, the requested change would not cause interference in excess of 0.1 percent to any other station. As such, the Commission should extend to WYFF-DT the same relief extended to similarly situated stations in the *Seventh Report and Order*.

Indeed, fundamental precepts of administrative law require the Commission to extend similar relief to WYFF-DT. *See Burlington Northern and Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) (“Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”); *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (same). In the instant proceeding, the Commission has provided no explanation for its disparate treatment of WYFF-DT as compared to the similarly situated stations to which it provided relief in the *Seventh Report and Order*. As a result, the Commission, by failing to grant universal relief (which would apply with equal force to WYFF-DT), has acted arbitrarily and capriciously.

Modification of WYFF-DT’s allotment would be consistent with the relief extended to other stations in the *Seventh Report and Order* and would be consistent with the Commission’s overall goal in the DTV transition of encouraging replication of analog service. *See Seventh Report and Order*, ¶ 67. In addition, affording relief to WYFF-DT will serve the public interest by permitting WYFF-DT to provide digital service to more of its established analog viewers. *See id.*

### **Conclusion**

For the reasons set forth above and in Hearst’s January 25, 2007, comments filed in MB Docket No. 87-286, the Commission should reconsider the WGAL-DT allotment in the DTV TOA and Appendix B and instead specify 5.36 kW ERP and 415 meters HAAT for WGAL-DT’s Channel 8 post-transition facility. Likewise, for the reasons set forth above, the Commission should reconsider the WYFF-DT allotment and specify 1000 kW and 596 meters HAAT for WYFF-DT’s Channel 36 post-transition facility.

Respectfully submitted,

HEARST-ARGYLE TELEVISION, INC.

A handwritten signature in black ink, appearing to read 'Mark J. Prak', is written over a horizontal line.

Mark J. Prak  
Coe W. Ramsey  
Stephen Hartzell

BROOKS PIERCE McLENDON  
HUMPHREY & LEONARD, L.L.P.  
Wachovia Capitol Center, Suite 1600  
150 Fayetteville Street (27601)  
P.O. Box 1800  
Raleigh, NC 27602  
(919) 839-0300  
(919) 839-0304 (fax)

*Its Attorneys*

October 25, 2007



**EXHIBIT 1**  
**Hearst's Comments Filed January 25, 2007**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advanced Television Systems	)	MB Docket No. 87-268
and Their Impact upon the	)	
Existing Television Broadcast	)	
Service	)	
	)	

**COMMENTS OF HEARST-ARGYLE TELEVISION, INC.,  
KCWE LMA, INC. and WMOR-TV COMPANY**

Mark J. Prak  
Coe W. Ramsey  
Stephen Hartzell

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.  
Wachovia Capitol Center, Suite 1600  
150 Fayetteville Street (27601)  
Post Office Box 1800  
Raleigh, North Carolina 27602  
Telephone: (919) 839-0300  
Facsimile: (919) 839-0304

*Counsel to Hearst-Argyle Television, Inc.,  
KCWE LMA, Inc. and WMOR-TV Company*

January 25, 2007

Hearst-Argyle Television, Inc. ("Hearst"), parent company of each of the licensees of each of the stations described below in Section I, and KCWE LMA, Inc. ("KCWE") and WMOR-TV Company ("WMOR"), through their undersigned attorneys, file the following comments in response to the *Seventh Further Notice of Proposed Rule Making*, FCC 06-150 (Rel. Oct. 20, 2006) ("*Seventh Further Notice*").

**I.  
Hearst-Argyle Television, Inc.**

**A. WGAL-DT, Lancaster, Pennsylvania (Facility ID No. 53930)**

Hearst submits these comments to propose a change in the certified technical parameters for WGAL-DT's post-transition facility and a corresponding change to the data in Appendix B of the *Seventh Further Notice*. In its Form 381 for WGAL-DT (File No. BCERCT-1105ABI), Hearst certified to post-transition operation pursuant to its licensed DTV parameters. Hearst now requests to change its certification to specify replication parameters rather than its licensed DTV paramaters.

The *Seventh Further Notice* contemplates that stations meeting certain criteria be allowed to change their certified facility where the station has already constructed or has received authorization to construct facilities on its tentative channel designation that provide service to areas that extend beyond that to which the station certified in Form 381 and which would not result in interference in excess of 0.1 percent to any licensee's existing tentative channel designation. See *Seventh Further Notice*, ¶¶ 28-29. While Hearst's only authorization for WGAL-DT is for its current licensed facility (FCC File No. BLC DT-20010621ABF) to which it certified in Form 381, Hearst could obtain authorization for replication parameters at any time in full compliance with the Commission's current application freeze. (See WGAL-DT Engineering Statement, attached as Exhibit 1). In addition, the checklist replication facility could be granted

without prejudice to any other certified facility—as the attached engineering statement demonstrates, the proposed change in WGAL-DT’s certification complies with the 0.1 percent interference limit.

Accordingly, because there is no current bar to Hearst obtaining a replication authorization for WGAL-DT and because the proposed change does not result in interference in excess of 0.1 percent to any licensee’s existing tentative channel designation, Hearst submits that WGAL-DT satisfies the criteria set forth in paragraphs 28-29 of the *Seventh Further Notice*, and thus, the data in Appendix B should be changed to WGAL-DT’s replication facility as follows:

<b>Current Appendix B WGAL-DT Data (Licensed)</b>	<b>Correct WGAL-DT Data (Replication)</b>
393 meters HAAT	415 meters HAAT
13.4 kW ERP	5.36 kW ERP

Even if WGAL-DT did not satisfy the criteria for permitting a change in its Form 381 certification, WGAL-DT’s situation is unique and WGAL-DT should be permitted to change its Form 381 certification to its replication facility for the following reasons:

First, and most significantly, the public interest will be served by allowing Hearst to change its initial certification for the WGAL-DT facility. Change in the certified facility for WGAL-DT will result in nearly 800,000 more viewers being able to receive WGAL-DT’s signal. Based on the current Appendix B technical parameters, the service population would be 3,313,004; however based on replication technical parameters, the service population would be 4,104,353. Thus, the replication facility represents an increase in population coverage of 23.9 percent. And, notably, WGAL-DT’s licensed facility only matches 88 percent of if its current NTSC coverage, whereas the replication facility will match virtually all of the station’s NTSC



coverage. *See* WGAL-DT Engineering Statement. Accordingly, not only would WGAL-DT's replication facility result in service to more people than WGAL-DT's licensed facility, but absent WGAL-DT's ability to construct its replication facility, some viewers would lose access to WGAL's signal after the termination of the station's NTSC operation.

Second, as mentioned above and discussed further in the WGAL-DT Engineering Statement, changing the Appendix B data to reflect WGAL-DT's replication parameters will not result in any new interference to the tentative channel designation operations of any other stations. *See* WGAL-DT Engineering Statement. Accordingly, permitting WGAL-DT to change its Form 381 certification will not result in harm to any station or otherwise impede the Commission's finalization of the DTV table of allotments. Indeed, because Hearst was initially assigned an out-of-core digital channel (channel 58) for WGAL-DT, WGAL-DT's proposed "checklist" parameters could have caused up to 2% interference to other stations. That Hearst's proposed replication facility would cause less than the 0.1% interference counsels strongly in favor of permitting the proposed change in certified post-transition facilities for WGAL-DT.

Third, WGAL-DT is required to surrender channel 58, and as a practical matter, Hearst desires to transition its DTV operation to its non-directional top-mounted antenna that it currently uses for its Channel 8 NTSC operations. Hearst can do this only if WGAL-DT is permitted to "carry over" its replication technical parameters to Channel 8. Carrying its currently licensed DTV operation over to Channel 8 would require Hearst to acquire and install a new Channel 8 directional antenna. Avoiding the need to replace the antenna would save considerable financial resources, especially since Hearst has already invested considerable "sunk costs" in its temporary Channel 58 operation.

And finally, Hearst's mistaken certification to its licensed facility in its Form 381 filing was based on Hearst's desire to comply with the Commission's "use it or lose it" deadline. WGAL-DT was originally assigned an out-of-core digital channel (channel 58) and obtained its current digital license in 2001 (FCC File No. BLCDDT-20010621ABF), well in advance of the Commission's establishment of the "use it or lose it" deadline. While, as discussed above, WGAL-DT could apply for and receive a "checklist" replication facility, construction of such a facility is impractical prior to the end of the DTV transition for the following reasons:

- WGAL-DT's replication facility is based on its licensed NTSC Channel 8 facility in FCC File No. BLCT-19981009KE pursuant to which its NTSC antenna is top mounted at 415 meters HAAT.<sup>1</sup> Because WGAL's NTSC antenna will need to remain in operation during the DTV transition, it would be physically impossible for WGAL to construct its DTV top-mount replication facility until the top-mount NTSC antenna is removed.
- Any modifications to WGAL-DT's licensed facility prior to the end of the DTV transition would not be practical because WGAL-DT is ultimately required to move its DTV operation from channel 58 to an in-core channel (tentatively designated as WGAL's NTSC channel 8).

Consequently, because it is impractical to construct WGAL-DT's replication facility prior to the end of the DTV transition and in order to comply with the July 1, 2005, "use it or lose it" interference protection deadline, WGAL-DT certified to its current licensed DTV facility which only serves 88.2% of the population of the replication facility. Hearst now recognizes that its Form 381 election was made in error because, as discussed above, Hearst's Form 381 election

---

<sup>1</sup> WGAL's 1997 baseline NTSC facility (File No. BLCT-2263) differed very slightly: 112 kW ERP at 415 meters HAAT.

will result in a loss of post-transition service to a significant number of viewers. As with other stations with a similar top-mount replication issue, Hearst desires to certify to its checklist replication facility and recognizes that a waiver of the use-it-or-lose-it deadline may be necessary. As discussed in the margin, grant of such a waiver would be in the public interest.<sup>2</sup>

The *Seventh Further Notice* recognizes that, in certain circumstances, the public interest is better served by allowing stations to change their certified facilities at this time. Hearst submits that WGAL-DT's unique case presents circumstances that warrant the requested change in the Form 381 certification and a corresponding change to the data in Appendix B.

**B. WPTZ-DT, North Pole, New York (Facility ID No. 57476)**

**1. WPTZ-DT Community of License**

In 1999, Hearst filed a Petition for Rule Making proposing to change the community of license of WPTZ from North Pole, New York, to Plattsburgh, New York. That Petition remains pending at the Commission in RM-9669, and because the Commission is considering the new digital table of allotments, now is the ideal time to dispose of the Petition.

In July 1999, the Commission issued a *Notice of Proposed Rule Making* (DA 99-1235) in MM Docket No. 99-238, RM-9669, which proposes the reallocation of NTSC Channel 5 and DTV Channel 14 from North Pole to Plattsburgh, New York. The *NPRM* recognizes that North

---

<sup>2</sup> In the *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18,279 (2004) ("*DTV R&O*"), the Commission stated that it "will establish a limited waiver process and grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown." *DTV R&O*, at ¶ 87. Stations "that cannot build out for reasons beyond their control" may seek a waiver. *DTV R&O*, at ¶ 83. The instant case would present a circumstance beyond Hearst's control, as it would be physically impossible to top mount WGAL-DT's antenna until the end of the DTV transition at which time WGAL's top-mount NTSC antenna may be removed.

Grant of such a waiver would not undermine the digital transition and unwavering enforcement of the use-it-or-lose-it maximization/replication deadline against WGAL-DT would be inequitable and contrary to reason and the public interest. Absent a waiver, Hearst would be required to remove and relocate its NTSC antenna, which would likely require Hearst to purchase a side-mount antenna for WGAL's temporary NTSC operation. Not only would such modification to WGAL's NTSC facility involve a sunk cost in equipment that will only be useful until the DTV transition is complete, but such modification would likely involve a reduction of WGAL's NTSC height and power, and thus, result in a loss of NTSC service to some of WGAL's viewers.

Pole likely no longer qualifies as a community for allotment purposes, while on the other hand, Plattsburgh clearly qualifies as a community. The *NPRM* also recognizes that the proposal does not involve a change in Petitioner's transmitter site, and therefore, the proposal will not result in any loss of reception by anyone presently receiving WPTZ's signal.

Not only would the proposal not result in any change to the station's transmitter site, but the public's ability to access WPTZ's studios would not change either. While the station was constructed in 1954 with its city of license as North Pole, under the old "15 mile rule" WPTZ's main studio was constructed and continues to be located in Plattsburgh, NY. Regardless of the outcome of Hearst's request to change WPTZ's community of license, Hearst has no plans to relocate WPTZ's main studio.

Hearst filed its proposal for one simple reason. Presently, the station is required to use "North Pole" as the first community listed in its top-of-the-hour station identification required by Section 73.1201 of the Commission's rules. This requirement seemed anachronistic to Hearst since, as the Commission rightly noted in the *NPRM*, North Pole is not much more than a small, holiday novelty village. *NPRM*, ¶ 5. Given that WPTZ's main studios have long been located in Plattsburgh, it makes more sense to have WPTZ's community of license square with its main studio location.

Hearst hereby restates its present desire to change its community of license from North Pole to Plattsburgh, New York. Also, in support of the proposal, Hearst hereby incorporates the statements made in its Petition for Rule Making and comments filed in that proceeding (MM Docket No. 99-238, RM-9669).

Hearst respectfully requests that the Commission complete the rulemaking, grant the Petition, and adopt a *Report and Order* reallocating NTSC Channel 5 and DTV Channel 14 from

North Pole to Plattsburgh, New York. Similarly, Hearst respectfully requests that the data in Appendix B and in the proposed digital table of allotments be changed to reflect Plattsburgh, New York, as WPTZ-DT's community of license.

2. WPTZ-DT Post-Transition Operating Parameters

Hearst also submits these comments to clarify certain data included in Appendix B to the *Seventh Further Notice* for WPTZ-DT (Facility ID No. 57476). In Appendix B, several of the data are incorrect for WPTZ-DT's post-transition facility.

Hearst's post-transition WPTZ-DT facility will operate at 845 meters HAAT, and the facility's geographic coordinates will be 44-31-32 N, 072-48-58 W. The Antenna ID will be 72521 (Hearst derived the Antenna ID from the Commission's CDBS database; Hearst is unable to confirm the accuracy of that antenna identification number). Indeed, these data are currently in the Commission's CDBS database, and are derived from Hearst's current construction permit for WPTZ-DT (File No. BMPCDT-20060403BHW).<sup>3</sup> These are not the data to which Hearst certified in Form 381 (File No. BCERCT-20051105AAP), but they are operating parameters which the Commission approved during the "freeze" and which only slightly modify the certified parameters. As such, Hearst respectfully requests that Appendix B be revised to account for the operating parameters set forth in the current WPTZ-DT construction permit.

Hearst respectfully requests that the Appendix B data be corrected to account for the modified and approved WPTZ-DT parameters as set forth in the table below:

---

<sup>3</sup> On January 16, 2007, Hearst filed a license to cover application for the WPTZ-DT construction permit. See File No. BLCDT-20070116ACW.

<b>Erroneous Appendix B WPTZ-DT Data</b>	<b>Correct WPTZ-DT Data</b>
842 meters HAAT	845 meters HAAT
Antenna ID 41544	Antenna ID 72521
44-31-33 N latitude (NAD 27)	44-31-32 N latitude (NAD 27)
72-48-54 W longitude (NAD 27)	72-48-58 W longitude (NAD 27)

**C. WLWT-DT, Cincinnati, Ohio (Facility ID No. 46979)**

Hearst notes that there is no Antenna ID listed in Appendix B for WLWT-DT. The Commission's CDBS database indicates that the Antenna ID for WLWT-DT's authorization in File No. BMPCDT-20041102AHZ is 68046, although Hearst is unable to confirm the accuracy of that identification number. File No. BMPCDT-20041102AHZ is the certified facility in the WLWT-DT Form 381 (File No. BCERCT-20041105ABB) and authorizes operation on WLWT-DT's tentative channel designation ("TCD").

**D. WCVB-DT, Boston, Massachusetts (Facility ID No. 65684)**

Hearst notes that there is no Antenna ID listed in Appendix B for WCVB-DT. The Commission's CDBS database indicates that the Antenna ID for WCVB-DT's operation pursuant to BLCDT-20020102AAH is 39982, although Hearst is unable to confirm the accuracy of that identification number. File No. BLCDT-20020102AAH is the certified facility in the WCVB-DT Form 381 (File No. BCERCT-20041105ABE) and authorizes operation on WCVB-DT's TCD.

**E. WXII-DT, Winston-Salem, North Carolina (Facility ID No. 53921)**

Hearst notes that there is no Antenna ID listed in Appendix B for WXII-DT. The Commission's CDBS database indicates that the Antenna ID for WXII-DT's authorization in File No. BPCDT-19991020ACD is 27907, although Hearst is unable to confirm the accuracy of that identification number. File No. BPCDT-19991020ACD is the certified facility in the WXII-DT Form 381 (File No. BCERCT-20041105ABR) and authorizes operation on WXII-DT's TCD.

**F. KHOG-DT, Fayetteville, Arkansas (Facility ID No. 60354)**

Hearst notes that there is no Antenna ID listed in Appendix B for KHOG-DT. The Commission's CDBS database indicates that the Antenna ID for KHOG-DT's operation pursuant to BLCDT-20020904AAX is 29481, although Hearst is unable to confirm the accuracy of that identification number. File No. BLCDT-20020904AAX is the certified facility in the KHOG-DT Form 381 (File No. BCERCT-20041105AAZ) and authorizes operation on KHOG-DT's TCD.

**G. KHBS-DT, Fort Smith, Arkansas (Facility ID No. 60353)**

Hearst notes that there is no Antenna ID listed in Appendix B for KHBS-DT. The Commission's CDBS database indicates that the Antenna ID for KHBS-DT's operation pursuant to BLCDT-20031121AMR is 44809, although Hearst is unable to confirm the accuracy of that identification number. File No. BLCDT-20031121AMR is the certified facility in the KHBS-DT Form 381 (File No. BCERCT-20041105AAY) and authorizes operation on KHBS-DT's TCD.

**H. KQCA-DT, Stockton, California (Facility ID No. 10242)**

Hearst notes that there is no Antenna ID listed in Appendix B for KQCA-DT. The Commission's CDBS database indicates that the Antenna ID for KQCA-DT's operation pursuant

to BLCDT-20060623AAM is 65422, although Hearst is unable to confirm the accuracy of that identification number. File No. BLCDT-20060623AAM covered File No. BMPCDT-20020626AAA, and that latter file number is the certified facility in the KQCA-DT Form 381 (File No. BCERCT-20041105AAT) and authorizes operation on KQCA-DT's TCD.

**I. KETV-DT, Omaha, Nebraska (Facility ID No. 53903)**

Hearst notes that there is no Antenna ID listed in Appendix B for KETV-DT. The Commission's CDBS database indicates that the Antenna ID for KETV-DT's operation pursuant to BLCDT-20041222AED is 66662, although Hearst is unable to confirm the accuracy of that identification number. File No. BLCDT-20041222AED covered File No. BMPCDT-20040325ABG, and that latter file number is the certified facility in the KETV-DT Form 381 (File No. BCERCT-20041105AAW) and authorizes operation on KETV-DT's TCD.

**J. KOCT-DT, Carlsbad, New Mexico (Facility ID No. 53908)**

KOCT is a full-power satellite station of commonly-owned KOAT-TV, Albuquerque, New Mexico. Hearst notes that there is no Antenna ID listed in Appendix B for KOCT-DT. The Commission's CDBS database indicates that the Antenna ID for KOCT-DT's operation pursuant to BPCDT-19991101AEP is 29464, although Hearst is unable to confirm the accuracy of that identification number. File No. BPCDT-19991101AEP is the certified facility in the KOCT-DT Form 381 (File No. BCERCT-20041105ACM) and authorizes operation on KOCT-DT's TCD.

**K. KOFT-DT, Farmington, New Mexico (Facility ID No. 53904)**

KOFT is a full-power satellite station of commonly-owned KOAT-TV, Albuquerque, New Mexico. Hearst notes that there is no Antenna ID listed in Appendix B for KOFT-DT. The Commission's CDBS database indicates that the Antenna ID for KOFT-DT's operation pursuant to BMPCDT-20041028AGN is 67991, although Hearst is unable to confirm the accuracy of that



identification number. File No. BMPCDT-20041028AGN is the certified facility in the KOFT-DT Form 381 (File No. BCERCT-20041105ACS) and authorizes operation on KOFT-DT's TCD.

**L. KCRA-DT, Sacramento, California (Facility ID No. 33875)**

Hearst submits these comments to correct the geographic coordinates listed for KCRA-DT in Appendix B. Hearst intends to operate KCRA-DT post transition from a transmission location of 38-15-54.0 N latitude, 121-29-24.0 W longitude (NAD 27), and requests that these coordinates be substituted for the incorrect coordinates of 38-15-52.0 N latitude, 121-29-22.0 W longitude that are listed in Appendix B. The geographic coordinates were derived from the station's analog license as they existed prior to 2003. In 2003, Hearst corrected the coordinates for KCRA's analog facility. See FCC File Nos. BPCT-20031017ACP and BLCT-20040130AOW. Accordingly, Hearst now requests that the coordinates also be corrected for the digital replication facility.

<b>Erroneous Appendix B KCRA-DT Data</b>	<b>Correct KCRA-DT Data</b>
38-15-52.0 N latitude (NAD 27)	38-15-54.0 N latitude (NAD 27)
121-29-22.0 W longitude (NAD 27)	121-29-24.0 W longitude (NAD 27)

Additionally, Hearst is unable to confirm or deny the accuracy of the Antenna ID (74812) for KCRA-DT referenced in Appendix B.

**M. WDSU-DT, New Orleans, Louisiana (Facility ID No. 71357)**

WDSU-DT is currently off the air pursuant to Special Temporary Authority to remain silent which was most recently extended in FCC File Number BLESTA-20060919ABJ. WDSU-DT is silent due to damage sustained from Hurricane Katrina on August 29, 2005.